

MEMORANDUM OF UNDERSTANDING

PURSUANT TO
THE ECONOMY ACT

THROUGH WHICH

[name of your operating unit]
U.S. DEPARTMENT OF COMMERCE

IS PURCHASING
[state what you are purchasing]

FROM

[name of other agency]

[Note: This format is for use only to order goods or services from another Federal agency. If your unit chooses to provide goods or services, or if you wish to obtain goods or services from an organization that is not a Federal agency, please contact the General Law Division at 202-482-5391 for advice.]

1. PARTIES AND PURPOSE

This Memorandum of Understanding (MOU) establishes an agreement between the *[name of DOC office]*, U.S. Department of Commerce (DOC) and *[name of other agency]* through which *[name of DOC office]* will pay *[name of other agency]* for *[provide a general description of the good/service for which DOC is paying]*.

2. BACKGROUND

[Provide background information which addresses why we are requesting the goods/services.]

3. AUTHORITY

The authorities for DOC and *[name of other agency]* to enter into this agreement are:

(1) the Economy Act, 31 U.S.C. § 1535, which provides that an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if: (1) amounts are available; (2) the ordering agency decides the order is in the best interest of the United States Government; (3) the agency to fill the order is able to provide or get by contract the ordered goods or services; and (4) the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise (payments must be made on the basis of the actual cost of goods or services provided); and

(2) *[set forth your operating unit's legal authority under which it is making the purchase for goods/or services, i.e., the programmatic authority to which the purchase is related]*.

4. ECONOMY ACT FINDINGS

As set forth in the attached "Determinations and Findings Pursuant to 48 CFR 17.503," *[name of DOC office]* warrants that sufficient funding amounts are available, that this agreement is in the best interest of the United States Government, and that the services requested cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

[Pursuant to 48 CFR 17.503, if the Economy Act order requires contracting action by the servicing agency, there also must be a determination that at least one of the following circumstances is applicable:

(1) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services;

(2) the servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or

(3) the servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

Accordingly, if the order requires such contraction action, the agreement also must include a statement such as: “[Name of DOC office] warrants [choose one of the above 3 situations which applies].”]

[Name of other agency] warrants that it is able to provide or get by contract the requested services. [If the agreement requires contracting action by the servicing agency, the agreement must also include the following sentence: [Name of other agency] warrants that it has adequate statutory authority for the contractual action and will comply fully with the competition requirements of part 6 of the Federal Acquisition Regulations as well as all other legal or regulatory requirements applicable to the contract.]¹

5. TERMS AND CONDITIONS

[State the terms and conditions of the agreement, i.e., what it is specifically that you are purchasing, delivery requirements, and the amount that the other party will receive as payment. The goods/services ordered must further the mission of the Department. Orders that would divide the costs of goods or services among agencies participating in events such as conferences, etc. are suspect and should be discussed with the General Law Division (202-482-5391) prior to drafting the Economy Act MOU.]

6. TRANSFER OF FUNDS

[Explain the details of how DOC will pay for the goods/services, e.g., whether payments will be monthly, quarterly, etc. or in advance if required by the servicing agency.]

The appropriation out of which ***[name of other agency]*** will pay for these services is:

_____.

This amount will be deobligated to the extent that the servicing agency has not incurred obligations before the end of the period of availability of that appropriation. ***[NOTE: the servicing agency may ask for advance payment for all of part of the estimated costs of furnishing the supplies or services, or payment may be made after the supplies and***

¹ Note: if the servicing agency is not subject to the FAR, contact the General Law Division for further advice in drafting the agreement.

services have been furnished. Under no circumstances will the amount paid be more than the actual costs of the goods or services.]

7. COORDINATION

The agency contacts for coordination of the activities under this MOU are:

[Name of DOC office]; phone: _____; fax : _____; E-mail _____
[Name of other agency]; phone: _____; fax: _____; E-mail _____

8. DURATION OF AGREEMENT, AMENDMENTS AND MODIFICATIONS

This agreement will become effective when signed by all parties. The agreement will terminate on ***[date, but no longer than 3 years]***, but may be amended at any time by mutual consent of the parties. The parties will review this agreement at least once every three years to determine whether it should be revised, renewed, or canceled. Any party may terminate this agreement by providing ____ days written notice to the other party. This agreement is subject to the availability of funds.

9. RESOLUTION OF DISAGREEMENTS

Nothing herein is intended to conflict with current DOC or ***[name of other agency]*** directives. If the terms of this agreement are inconsistent with existing directives of either of the agencies entering into this agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished either by an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other

party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

***[name of DOC official who has authority
to sign Economy Act agreements]
[title]***

U. S. Department of Commerce

Date:_____

*[name of official at other agency
who has authority to sign
Economy Act Agreements]
[name of agency]
[title]*

Date:_____

Attachment

*DETERMINATIONS AND FINDINGS
PURSUANT TO 48 CFR 17.503*

[Name of DOC office] warrants:

- _____ that sufficient funding amounts are available;
- _____ that this agreement is in the best interest of the United States Government; and
- _____ that the services requested cannot be provided by contract as conveniently or cheaply by a commercial enterprise. ***[NOTE: place a check in each space for each finding to indicate it has been substantiated.]***

It has been determined that this Economy Act order:

- _____ does not require contracting action by the servicing agency; or
- _____ does require contracting action by the servicing agency and that one of the following circumstances exists:
 - _____ the acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services;
 - _____ the servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or
 - _____ the servicing agency is specifically authorized by law or regulation, *i.e.*, ***[set forth the citation for the law or regulation]***, to purchase such supplies or services on behalf of other agencies. ***[NOTE: place a check in each space above that applies.]***

[name of DOC official who has authority to sign this D&F, i.e., either a contracting officer or other official designated by the agency to sign the D&F]²

[title]

U.S. Department of Commerce

Date: _____

² If the servicing agency is not covered by the Federal Acquisition Regulations, approval of the D&F may not be delegated below the senior procurement executive of the Department.